

Remarks

Claims 1-17 are currently pending in the patent application. Applicant appreciates the courtesy extended by the Examiner in the brief teleconference of October 16, 2007, where Applicant expressed the belief that Ménard does not teach correspondence to Applicant's claimed invention. More specifically, Ménard merely selects between a cable modem and a telephone line connection. Accordingly, Applicant respectfully resubmits that the claimed invention is allowable over the cited references because the Office Action has not viewed the claimed invention as a whole. Notwithstanding and as suggested by the Examiner, Applicant has included amendments to claims 1 and 7 that further address the above-mentioned deficiencies in the teachings of Ménard.

The Office Action dated August 20, 2007 indicated that claims 16 and 17 remain in condition for allowance, and listed the following rejections: Claims 1-13 stand rejected under 35 U.S.C. § 102(e) over Ménard (U.S. 6,944,151); and claims 14-15 stand rejected under 35 U.S.C. § 103(a) over Ménard in view of Vargo *et al.* (U.S. 6,477,164).

Applicant appreciates continued allowance of claims 16 and 17.

Applicant respectfully traverses the Section 102(e) rejections of claims 1-13 because the Examiner has not addressed each limitation and in doing so has failed to view the claimed invention as a whole as required under M.P.E.P. § 2142.02. The teachings of Ménard are generally directed to connecting a telephone set through either a PSTN connection or a packet-connection, but not to sending data between the connections (*i.e.*, the connections are used independently). Applicant respectfully submits that several of the Examiner's interpretations are inconsistent with this basic functionality of Ménard.

With particular regard to claim 7, the Examiner's assertion of correspondence asserts that the remote PSTN communications device (third device) is telephone set 62 and that the second device is telephone packet adapter 400a. This assertion ignores the limitations directed to using a PSTN interface. More specifically, the limitations are directed to establishing communications to the remote PSTN communications device (third device) using a PSTN interface of the second device. Applicant respectfully submits that the only interface that appears to correspond to a PSTN interface of the second device is the interface to telephone line 64. Thus, a proper analysis of the

teachings of Ménard reveals a device that selects between a PSTN connection (64) and a packet-based connection (60), but that it does not teach establishing a single connection using both connection types. Accordingly, Ménard does not teach or suggest Applicant's claimed invention, which includes a limitations directed to 1) producing and receiving sound and 2) establishing communications between a first device and a third device using a packet-based communication interface (communicating with the first device) and a PSTN communication interface (communicating with the third device).

Moreover, the Examiner has not shown correspondence to the connection being established in response to the first endpoint device receiving a PSTN identifier corresponding to the remote PSTN communication device. Applicant submits that a device connected to a standard PSTN telephone line does not receive its telephone number when receiving a call. Instead the PSTN network handles the telephone number and the routing of calls thereof. Where this not the case, one would need to configure a standard (PSTN) telephone with the correct telephone number; however, a standard PSTN telephone can be switched between any standard PSTN telephone line without any knowledge of the telephone number of the telephone line. Accordingly, the Examiner's assertion that the endpoint device receives the telephone number through a connection over telephone line 64 is unsupported by the teachings of Ménard.

Moreover the Examiner's assertion is illogical. The assertion relies upon a connection from telephone set 62 to first user 32 by dialing the telephone number using telephone line 64. A significant portion of the Examiner's assertion of correspondence to various other limitations relies upon the use of cable modems 40 and 60 (e.g., packet based interfaces of 32 and 54). As discussed above, Ménard teaches that each adapter selects between one of (and only one of) a modem interface and a telephone interface. Accordingly, it is improper and illogical for the Examiner to rely upon separate and distinct connection methods when asserting correspondence to limitations directed to a single connection.

Accordingly, the Section 102(e) rejection of claim 7, as well as the rejections of claims 8-11 that depend from claim 7, is improper and Applicant requests that they be withdrawn.

Regarding claim 1, the cited portions of the Ménard reference do not correspond to all of the limitations including those limitations directed to a remote database arrangement for determining a preferred path. The Examiner relies upon the call route steps 106, 108 and 116 to show correspondence to correlating the remote audio interface with one of the plurality of remote PSTNs. Ménard teaches that each of these steps occurs prior to accessing the Internet server. As such, the Internet server is not taught to be used to in these steps, and thus, the Examiner has failed to show correspondence to these limitations.

Notwithstanding, Applicant has amended claim 1 to include limitations directed to the path including a remote endpoint device used as a gateway between the broadband data network and a PSTN that is local to the endpoint device and to the destination audio interface. As discussed above, the teachings of Ménard are generally directed to connecting a telephone set through either a PSTN connection or a packet-connection, but not to sending data between the connections. Accordingly, Applicant submits that Ménard does not teach or suggest correspondence to the amended limitations.

For at least the aforementioned reasons, the Section 102(e) rejection of claim 1, as well as the rejections of claims 2-6 that depend from claim 1, is improper and Applicant requests that they be withdrawn.

Regarding claim 12, the cited portions of the Ménard reference do not correspond to all of the claimed limitations including those directed to a plurality of user-provided gateways. Under M.P.E.P. § 2111.01, words are to be given their plain meaning unless such a meaning is inconsistent with Applicant's specification. Applicant respectfully submits that provide means "(t)o make available; afford." provide. (n.d.). The American Heritage® Dictionary of the English Language, Fourth Edition (attached hereto). The Examiner appears to assert that subscribing to use a service makes one a provider of the service. Such a definition is inconsistent with the plain meaning as such a definition is essentially the opposite of the plain meaning (using versus providing). Mere use of a service, regardless of whether the service is restricted to subscribers, is not providing the service. Consistent with the teachings of Ménard, the cable company is a service provider. Use of the gateway is provided as part of the service. The users of the gateway are not providers of the gateway in any sense of the plain meaning of the words. Thus, the gateways relied upon by the Examiner are not user provided because they are not provided by the users of the system.

Moreover, Applicant submits that the Examiner's interpretation of user provided gateways is inconsistent with Applicant's specification which clearly distinguishes a service provider's gateway from a user's local gateway. *See, e.g.*, Applicant's Specification, Background and page 6. Therefore, the Section 102(e) rejection of claim 12, as well as the rejection of claim 13 that depend from claim 12, is improper and Applicant requests that they be withdrawn.

Applicant respectfully traverses the Section 103(a) rejections of claims 14-15 over Ménard '151 in combination with the Vargo '164 reference for at least the reasons set forth above in relation to the Section 102(e) rejection of claim 12. Moreover, the cited portions of the Vargo reference do not correspond to claimed limitations directed to restricting use to the plurality of other users, of a user's gateway as a remote network-terminating gateway. In an attempt to show correspondence, the Office Action cites to completely unrelated portions of the Vargo reference. The cited portions of the Vargo reference concern concatenating subpackets at the gateways and transmuxes and then sending these concatenated subpackets, in some instances after a predetermined period of time has elapsed (*see, e.g.*, col. 5, lines 5-21 and col. 6, lines 24-34). Applicant submits that Vargo's teachings relating to packet flow in no way relate to the claimed limitations directed to restricting user access. With particular regard to claim 15, the Examiner has not shown any teachings regarding the number of calls. Accordingly, the Section 103(a) rejections of claims 14 and 15 are improper and Applicant requests that they be withdrawn.

In view of the above discussion, Applicant believes that each of the rejections has been overcome and the application is in condition for allowance. A favorable response is requested. Should there be any remaining issues that could be readily addressed over the telephone, the Examiner is encouraged to contact the undersigned at (651) 686-6633.

Respectfully submitted,

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Attachment: American Heritage® Dictionary of the English Language, Fourth Edition

pro·vide  (prə-vīd') Pronunciation Key

v. pro·vid·ed, pro·vid·ing, pro·vides

v. *tr.*

1. To furnish; supply: *provide food and shelter for a family.*
2. To make available; afford: *a room that provides ample sunlight through French windows.*
3. To set down as a stipulation: *an agreement that provides deadlines for completion of the work.*
4. *Archaic* To make ready ahead of time; prepare.

v. *intr.*

1. To take measures in preparation: *provided for the common defense of the states in time of war.*
2. To supply means of subsistence: *She provides for her family by working in a hospital.*
3. To make a stipulation or condition: *The Constitution provides for a bicameral legislature.*

[Middle English *providen*, from Latin *prōvidēre*, *to provide for*: *prō-*, *forward*; see *pro-*¹ + *vidēre*, *to see*; see *weid-* in Indo-European roots.]

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